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SUBJECT: CANADA'S SECURITY CERTIFICATE SYSTEM

REF: 07 OTTAWA 1924

11. (U) Summary: Revised legislation to improve the balance between national security and civil rights has enabled Canada to meet a Supreme Court deadline and to seek updated immigration "security certificates" against five alleged members of the al-Qaeda network. The legislation permits the continued detention or monitoring of individuals deemed to pose a significant risk to national security, pending deportation. However, it also extends significant new rights to individuals subject to certificates, notably through the appointment of security-cleared lawyers or "special advocates" to represent their interests, new rules on disclosure and use of secret evidence, admissibility of evidence, and expanded detention and release provisions. The new legislation required the government to re-file its requests for certificates, together with supporting (including confidential) evidence, with the Federal Court of Canada, which must review each certificate to determine whether it is reasonable. Of the five individuals still subject to the certificates, one is in custody and four have won conditional release, pending deportation. End summary.

ANOTHER VICTORY FOR THE CONSERVATIVES

12. (U) On February 12, the Senate approved new "security certificate" legislation, which the Commons had passed on February 6, and which came into force on February 23. The Conservative government had submitted the bill specifically to address a February 23, 2007 Supreme Court ruling that the existing certificate approval process infringed Canada's Charter of Rights and Freedoms by not allowing individuals subject to security certificates to know the cases against them and by denying them the same detention review rights as permanent residents. The revised legislation also reflects some recommendations of parliamentary committees reviewing the 2001 Anti-Terrorism Act (also now undergoing revision in the Commons, following Senate approval of new legislation on March 6). The Supreme Court had suspended its ruling for one year to give Parliament time to rewrite the law.

13. (U) Prime Minister Stephen Harper had made passage of the revised legislation on security certificates a prominent feature of his policy agenda in the October 2007 "Speech from the Throne" (reftel), as part of the government's efforts to combat terrorism and to enhance law and order. However, human rights groups, as well as at least one of the individuals subject to security certificates, have already argued that the new law still violates civil rights and have indicated that they will continue to challenge the law's constitutionality.

AN "IMPORTANT TOOL"

14. (U) Minister of Public Safety Stockwell Day has publicly described security certificates as an "important tool" to protect Canada from terrorist threats, while still respecting civil rights and freedoms. The security certificate system has been in use since 1978 to detain and deport non-citizens - both permanent residents and foreign nationals -- whom the government deems inadmissible to Canada under various security-related provisions (including

terrorism, serious criminality, organized crime, or human rights violations) of the Immigration and Refugee Protection Act (IRPA). IRPA authorized detention pending deportation on the basis of sensitive information without any disclosure to the individuals in question, subject to review by the Federal Court of Canada. Certificates are preventative in nature and deal with potential threats, not crimes after they take place.
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15. (U) The Minister of Citizenship and Immigration and the Minister of Public Safety must both sign a warrant for detention when the government judges an individual presents a danger to national security, to the safety of any person, and/or is unlikely to appear at a proceeding for removal (deportation). A Federal Court must review the "reasonableness" of each request for a certificate; if the Court upholds the request, the ruling becomes a removal order.

16. (U) Prior to implementation of the new legislation, the government had issued 28 security certificates. Courts had quashed three of these, while the government was able to deport 19 other subjects from Canada. Six certificates were still valid as of February 2008 under the old legislation. The government has now sought re-issuance of five new certificates under the revised legislation, which the Federal Court must now approve, while the Supreme Court must rule on the constitutionality of the new legislation in light of its 2007 ruling.

17. (U) Persons subject to removal nonetheless have the right to a pre-removal risk assessment (PRRA) by Citizenship and Immigration Canada, subject to a further review by a Federal Court judge. If the judge determines a person faces a risk of torture or death in his/her country of origin greater than the risk he/she poses by remaining in Canada, the judge may stay the removal order and the

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individual may be detained (even indefinitely) pending deportation or released, subject to whatever monitoring conditions the judge may deem appropriate. Various conditions currently in use in different certificate cases include the wearing of electronic GPS ankle monitoring bracelets at all times, the posting of cash or bonds as bail, living with/being accompanied by guarantor(s) at all times, house arrest (approved supervised outings only), restrictions on activities, restrictions on communications (no use of internet, telephone, or other communication device), wiretaps on telephones, opening of all mail, and access to the home by federal agents at any time.

NEW PROVISIONS

18. (U) The revised legislation addresses the balance between security and civil rights through substantial changes to procedures relating to secret evidence and disclosure through the appointment of "special advocates" from a list of independent, qualified, and security-screened lawyers that the Minister of Justice compiles. (Previously, persons named under the government's request for a certificate received only a summary of the case against them.) Under the new law, special advocates will have access to confidential evidence on which the government may have based its

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decision to seek security certificates against specific individuals, and, when appropriate, to challenge the relevance, reliability, and weight of such confidential information - without disclosing it to their clients. Special advocates may also act in all review and other proceedings related to ongoing certificate cases. The Ministry of Justice has already accredited 13 new special advocates.

19. (U) The legislation also changes rules on disclosure. According to a non-definitive opinion from the Law and Government Division of the Parliamentary Information and Research Service, "the rules for deciding what information or evidence will be heard in the absence of the person subject to the certificate and the public are now easier to meet." Under the previous system, a judge had to

determine that disclosure "would" be injurious to national security or to the safety of any person. Under the new system, a judge must decide only whether disclosure "could" possibly be injurious to national security or endanger the safety of any person. However, the revised law specifically bans use of any evidence if there are reasonable grounds to believe authorities obtained it as a result of torture. (Previously, the admissibility of any evidence was left to the discretion of a judge.) There is a new but conditional right of appeal on the reasonableness of a certificate to the Federal Court of Appeal.

¶10. (U) New detention and release provisions go even further than the changes that the Supreme Court had required, provide new avenues of review and appeal, and may facilitate the release of detained individuals. All persons subject to security certificates are now entitled to an initial detention review by a Federal Court judge that must commence within 48 hours of their detention. A judge either deems the certificate to be reasonable or quashes it. If a judge finds the case reasonable, he/she may order continued detention or conditional release. Individuals may apply to the Federal Court at six-month intervals for a review of their detention or of the conditions of their release.

RENEWAL OF FIVE CERTIFICATES

¶11. (U) On February 23, the government renewed requests for re-issuance of five certificates, dropping an earlier certificate against Manickavasagam Suresh, an alleged Tamil Tiger fundraiser who has been subject to a certificate since 1994. The government is reportedly considering other -- as yet unspecified -- legal measures against Suresh. Summaries of the cases against the five individuals now subject to certificates follow:

HASSAN ALMREI

-- Syrian-born Hassan Amrei, aged 30, has been held in solitary confinement since his arrest in October 2001. He is the only individual subject to a certificate to remain in custody. He arrived in Canada in 1999 and obtained refugee status in 2000. Canada contends he is part of an international document forgery ring with ties to al-Qaeda. Almrei has admitted to participating in weapons training at a camp in Afghanistan affiliated with bin Laden. He is alleged to have gained access to a restricted area at Toronto's Pearson airport in September 1999. In November 2003, a Federal Court judge halted Almrei's deportation to Syria and ordered a review of his case on the ground that he could be subject to torture. The government has argued that the risk is not sufficiently substantial to forego his removal, a contention that Almrei is currently challenging in the Federal Court. He is in custody in Kingston, Ontario;

ADIL CHARKAOUI

-- Moroccan-born Adil Charkaoui, aged 31, has lived in Montreal

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since 1995 and has been subject to a security certificate since May ¶2003. Canada contends that he trained at an al-Qaeda camp in Afghanistan in 1998 and formed part of a sleeper cell in Canada, based on information from Ahmed Ressam (the "millennium bomber"), who said he trained alongside Charkaoui at al-Qaeda's Khaldun camp in Afghanistan in 1998, where Charkaoui was in charge of recruits. Charkaoui maintains that he traveled to Pakistan for five months in 1998 to study at a Karachi religious school. Other evidence against Charkaoui came from Abu Zubayda, but the government has now decided not to utilize this evidence, which may have resulted from "waterboarding." Charkaoui won conditional release in February 2005 in Montreal;

MOHAMMED HARKAT

-- Algerian-born Mohammed Harkat, aged 36, came to Canada in September 1995. Canada contends he is an al-Qaeda sleeper agent who has repeatedly lied to officials about his terrorist links. He claims that he was for five years a relief worker with the Muslim

World League in Pakistan. The Canadian Security Intelligence Service (CSIS) alleges that he traveled to Afghanistan during those five years, but has withdrawn some evidence in its case apparently obtained from Abu Zubayda, possibly as a result of "waterboarding." Harkat admits that he met the late alleged al-Qaeda financier and senior operative Ahmed Said Khadr (whose son is now separately facing a military trial in Guantanamo after five years imprisonment) in Canada, but insists that he maintained no meaningful connection with Khadr. Harkat won conditional release in March 2007 in Ottawa;

MAHMOUD JABALLAH

-- Egyptian-born Mahmoud Jaballah, aged 41, was first detained on a security certificate in 1999, but the Federal Court threw the case out by ruling that CSIS relied too heavily on dubious information from Egyptian security agents. He was detained on a second certificate in August 2001, which the Federal Court subsequently upheld. Canada alleges that Jabarah is a full-fledged member of Al Jihad, acting as a communications conduit for terrorist cells involved in the bombings of U.S. embassies in Kenya and Tanzania in 1998. It further claims that he had contacts with bin Laden top aide Ayman al-Zawahri, including by phone. Jaballah has admitted contacts with individuals wanted by international law enforcement, including Hassan Farhat, Mustafa Krer, Kassem Daher, Mohamed Mahjoub, Thirwat Salah Shehata, Adel Al-Bari, and Ibrahim Eidaous. Jaballah won conditional release in April 2007 in Toronto;

MOHAMED MAHJOUB

-- Egyptian-born Mohamed Mahjoub, aged 44, came to Canada in 1995 and was detained in June 2000. CSIS contends that he was a high-ranking member of the "Vanguards of the Conquest," a radical wing of the Egyptian Islamic Jihad, and participated in decision-making on the Vanguards' terrorist operations. An Egyptian court convicted Mahjoub in absentia for his involvement with the Vanguards and sentenced him to a fifteen-year prison term. Mahjoub admits meeting Osama bin Laden and working in a senior capacity at bin Laden's agricultural firm in Sudan in the early 1990s. On arrival in Canada in 1995, he stayed with the late Ahmed Said Khadr for three weeks. Mahjoub won conditional release in April 2007 in Toronto and is fighting removal on the grounds that he faces torture or death if returned to Egypt.

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